No. 24-935

In the Supreme Court of the United States

FLOWERS FOODS, INC., ET AL.,
Petitioners,

v.

ANGELO BROCK,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, RETAIL LITIGATION CENTER, NATIONAL RETAIL FEDERATION, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, NATIONAL ASSOCIATION OF MANUFACTURERS, AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC. AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

JENNIFER B. DICKEY
JONATHAN D. URICK
U.S. Chamber Litigation Center
1615 H Street, NW
Washington, DC 20062
(202) 463-5337

ARCHIS A. PARASHARAMI
Counsel of Record
DANIEL E. JONES
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
aparasharami@mayerbrown.com

[additional counsel on signature page]

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INTEREST OF THE *AMICI CURIAE*

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the Nation's business community.[1]

The Retail Litigation Center, Inc. (RLC) is a 501(c)(6) nonprofit trade association that represents national and regional retailers, including many of the country's largest and most innovative retailers, across a breadth of retail verticals. The RLC is the only trade organization solely dedicated to representing the retail industry in the courts. The RLC's members employ millions of people throughout the U.S., provide goods and services to tens of millions more, and account for hundreds of billions of dollars in annual sales. The RLC offers retail-industry perspectives to courts on important legal issues and highlights the industry-wide consequences of significant cases. Since its founding in 2010, the RLC has filed more than 250 amicus briefs on issues of importance to the retail industry. Its amicus briefs have been helpful to courts

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no entity or person other than *amici*, their members, or their counsel made a monetary contribution intended to fund its preparation or submission.

throughout the United States, as evidenced by citation to RLC amicus briefs in numerous precedential opinions. See, *e.g.*, *South Dakota* v. *Wayfair, Inc.*, 585 U.S. 162, 184 (2018); *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 568 U.S. 519, 542 (2013); *Chewy, Inc.* v. *U.S. Dep't of Lab.*, 69 F.4th 773, 777-78 (11th Cir. 2023); *State* v. *Welch*, 595 S.W.3d 615, 630 (Tenn. 2020).

The National Retail Federation (NRF) is the world's largest retail trade association and the voice of retail worldwide. The NRF's membership includes retailers of all sizes, formats and channels of distribution, as well as restaurants and industry partners from the United States and more than 45 countries abroad. NRF has filed briefs in support of the retail community on dozens of topics.

The National Association of Wholesaler-Distributors (NAW) is an employer and a non-profit, nonstock, incorporated trade association that represents the wholesale distribution industry—the essential link in the supply chain between manufacturers and retailers as well as commercial, institutional, and governmental end users. NAW is made up of direct-member companies and a federation of national, regional, and state associations across 19 commodity lines of trade which together include approximately 35,000 companies operating nearly 150,000 locations throughout the nation. The overwhelming majority of wholesaler-distributors are small-to-medium-size, closely held businesses. As an industry, wholesale distribution generates more than $8 trillion in annual sales volume, providing stable and well-paying jobs to more than 6 million workers.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the

U.S., representing small and large manufacturers in all 50 states and in every industrial sector. Manufacturing employs nearly 13 million men and women, contributes $2.9 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the U.S.

The National Federation of Independent Business Small Business Legal Center, Inc. (NFIB Legal Center) is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. (NFIB), which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members.

Many of *amici*'s members and affiliates regularly rely on arbitration agreements in their contractual relationships. Arbitration allows them to resolve disputes promptly and efficiently while avoiding the costs associated with litigation in court—because arbitration is speedy, fair, inexpensive, and less adversarial than traditional litigation. Based on the policy reflected in the Federal Arbitration Act (FAA), *amici*'s members and affiliates have structured millions of

contractual relationships around the use of arbitration to resolve disputes.

Amici therefore have a strong interest in reversal of the judgment below. The Tenth Circuit's holding that the FAA does not apply to workers who are not directly involved in the transportation of goods across borders cannot be squared with either the text or historical context of the FAA. Unless corrected, the decision will diminish the FAA's protections, harming both businesses and workers alike.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted the FAA in 1925 "in response to judicial hostility to arbitration." *Viking River Cruises, Inc.* v. *Moriana*, 596 U.S. 639, 649 (2022). For a century, the FAA has embodied Congress's strong commitment to protecting the enforceability of arbitration agreements.

To that end, Section 2 of the FAA broadly protects arbitration agreements "evidencing a transaction involving commerce." 9 U.S.C. § 2. This Court has held that the phrase "involving commerce" in Section 2 "signals an intent to exercise Congress' commerce power to the full." *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U.S. 265, 277 (1995).

In recent years, opponents of arbitration increasingly have tried to avoid the FAA's protections by advancing unwarranted and expansive constructions of the narrow exemption in Section 1, which excludes from the Act's coverage "contracts of employment of seamen, railroad employees, or any *other class of workers engaged in foreign or interstate commerce*." 9 U.S.C. § 1 (emphasis added).

That is what happened here. As Flowers Foods's brief explains (at 9-10), respondent Angelo Brock belongs to a class of workers that sells and distributes baked goods to customers entirely within a single state. These workers do not cross state lines themselves, nor do they load or unload shipments that move interstate.

Notwithstanding the purely intrastate character of the work, Brock resisted enforcement of his arbitration agreement by asserting that the Section 1 exemption applied. The Tenth Circuit agreed, referring to what it characterized as the "continuous interstate route" of the "*products*[]" that Brock and the other members of the class of workers carry, rather than the nature of the work that they perform. Pet. App. 26a (emphasis added). In assessing whether the products moved through a continuous interstate journey, the court of appeals applied a complex analysis based on three non-exclusive factors: "(1) the buyer-seller relationship between Flowers and Brock; (2) the buyer-seller relationship between Brock and Brock's customers, and (3) the buyer-seller relationship, if any, between Flowers and Brock's customers." Pet.App.18a-19a & n.5. Based primarily on its view of the third factor, the Tenth Circuit concluded that the products remained in a continuous stream of interstate commerce until workers like Brock delivered them, and that the path those goods followed therefore triggered Section 1's residual clause.

That result—which flowed from the nebulous legal standard adopted by the court of appeals—is wrong.

The text, context, and structure of the FAA require giving Section 1's residual clause a narrow reading; this brief addresses what it means for a class of workers to be "engaged in foreign or interstate commerce" only within the meaning of Section 1's residual clause and not for purposes of other federal statutes or in other contexts.

More than two decades ago, this Court instructed that the Section 1 exemption must be given a "narrow construction" and "precise reading." *Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 118, 119 (2001). In *Southwest Airlines Co.* v. *Saxon*, the Court reaffirmed that Section 1's residual clause must be interpreted according to its "contemporary, common meaning" at the time the FAA was enacted in 1925—which included a circumscribed view of what it meant to be "engaged in foreign or interstate commerce." 596 U.S. 450, 455 (2022) (quotation marks omitted). The relevant language in Section 1—"other class of workers engaged in foreign or interstate commerce"—is also cabined by "the application of the maxim *ejusdem generis*" because it is a "residual phrase, following, in the same sentence, explicit reference to 'seamen' and 'railroad employees.'" *Circuit City*, 532 U.S. at 114; see *Saxon*, 596 U.S. at 458.

As the Court has twice reiterated in recent years, these interpretive principles make clear that what matters is "the actual *work*" performed by the "class of workers" rather than the origin and movement of the goods. *Saxon*, 596 U.S. at 456. The statute "focuses on 'the *performance* of work' rather than the industry of the employer." *Bissonnette* v. *LePage Bakeries Park Street, LLC*, 601 U.S. 246, 253 (2024) (quoting *Saxon*, 596 U.S. at 456). And it requires that the worker be

"actively engaged in transportation of goods across borders via channels of foreign or interstate commerce." *Id.* at 256 (quotation marks omitted).

The decision below failed to focus on the work, instead assessing Flowers' overall business and the previous interstate journey of some of the baked goods. That approach to the Section 1 exemption, if upheld, would result in Section 1's residual clause sweeping far beyond workers "*directly involved* in transporting goods across state or international borders." *Saxon*, 596 U.S. at 457 (emphasis added). Instead, as the Fifth and Eleventh Circuits have correctly concluded, local delivery drivers do not have the "'direct and necessary role' in the transportation of goods across borders" needed to trigger Section 1's narrow exemption. *Lopez* v. *Cintas Corp.*, 47 F.4th 428, 433 (5th Cir. 2022) (quoting *Saxon*, 596 U.S. at 457) see also *Hamrick* v. *Partsfleet, LLC*, 1 F.4th 1337, 1350 (11th Cir. 2021).

The Tenth Circuit's singular emphasis on the movement of goods, rather than the actual work, misinterprets Section 1 for the additional reason that the residual clause is limited to classes of workers whose duties *center* on interstate movement. As then-Judge Barrett has explained, for a class of workers to perform work analogous to "seamen" and "railroad employees," "a *central part* of the class members' job description" must require their direct participation in the "interstate movement of goods." *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 801 (7th Cir. 2020) (emphasis added). Then-Judge Jackson reached the same conclusion, applying the same rule announced in *Wallace*. *Osvatics* v. *Lyft, Inc.*, 535 F. Supp. 3d 1, 18 (D.D.C. 2021) (Jackson, J.) (quoting *Wallace*). And

this Court agreed in *Saxon* that the word "engaged" in Section 1 "emphasizes the *actual work* that the members of the class, as a whole, *typically* carry out." 596 U.S. at 456 (emphasis added). Yet here the class of workers is not directly involved in the transportation of goods across borders *at all*—let alone as a typical or central part of their jobs.

Finally, the Tenth Circuit's approach, if adopted, would create significant practical problems. A virtue of the Fifth and Eleventh Circuits' approach, in addition to its adherence to the text and this Court's precedents, is that it provides a clear, bright-line rule. That rule is easy for workers and businesses to understand and for courts to apply when determining whether the arbitration agreements of workers throughout wide sectors of the economy are protected by the FAA.

The Tenth Circuit's interpretation of the Section 1 exemption, by contrast, would significantly increase litigation over when and whether the FAA applies. That is contrary to Congress's fundamental purpose "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone Mem'l Hosp.* v. *Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983).

Unless the decision below is reversed, more businesses and workers will face uncertainty and litigation over whether the FAA governs their arbitration agreements, contrary to that purpose. Some of them could be deprived of the benefits secured by the FAA, including lower costs and greater efficiency in dispute resolution. Worse, the increased costs of litigating both the applicability of the Section 1 exemption, and,

if necessary, the merits of underlying disputes, would be passed on in the form of decreased compensation to workers or increased costs to consumers.

ARGUMENT

I. The Text And Structure Of The FAA Demonstrate That Plaintiff Is Not Included Within A "Class Of Workers Engaged In . . . Interstate Commerce."

A. Section 1's Residual Clause Is Limited To Classes Of Workers Directly Involved In Transporting Goods Across State Or International Borders.

1. The FAA's principal substantive provision, Section 2, provides that an arbitration agreement in "a contract evidencing a transaction *involving commerce* . . . shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2 (emphasis added). This Court has instructed that *Section 2's* "involving commerce" language must be read "expansively" to reach *all* arbitration agreements within Congress's commerce power. *Allied-Bruce*, 513 U.S. at 274.

Section 1, by contrast, creates a very limited exception to Section 2's broad coverage. It provides that the FAA's protections for arbitration agreements do not apply to "contracts of employment of seamen, railroad employees, or *any other class of workers engaged in foreign or interstate commerce*." 9 U.S.C. § 1 (emphasis added). Lest it swallow Section 2's general pro-

tections for arbitration, the residual clause in the Section 1 exemption requires a "narrow construction" and "precise reading." *Circuit City*, 532 U.S. at 118-19.[2]

This Court's recent decisions in *Saxon* and *Bissonnette* reaffirm three interpretive principles that inform the proper "narrow" and "precise reading."

First, the Section 1 exemption must be interpreted based on the "ordinary, contemporary, common meaning" of the statutory text at the time Congress enacted the FAA in 1925. *Saxon*, 596 U.S. at 455 (quotation marks omitted); accord *New Prime, Inc.* v. *Oliveira*, 586 U.S. 105, 113 (2019) (also recognizing the "reliance interests in the settled meaning of a statute").

Second, the words of the statutes must be interpreted "'in their context.'" *Saxon*, 596 U.S. at 455 (quoting *Parker Drilling Mgmt. Servs., Ltd.* v. *Newton*, 587 U.S. 601, 608 (2019)). The Court in *Saxon* reiterated the contrast between Section 2's broad "involving commerce" language and the "narrower" "engaged in * * * commerce" formulation in Section 1. 596 U.S. at 457-58 (citing *Circuit City*, 532 U.S. at 115-16, 118).

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[2] The three circuits that have confronted the issue have held that the Section 1 exemption does not apply to commercial contracts between one business and another. See *Fli-Lo Falcon, LLC* v. *Amazon.com, Inc.*, 97 F.4th 1190, 1196-97 (9th Cir. 2024); *Tillman Transp., LLC* v. *MI Bus. Inc.*, 95 F.4th 1057, 1064 (6th Cir. 2024); *Amos* v. *Amazon Logistics, Inc.*, 74 F.4th 591, 595-96 (4th Cir. 2023). Those decisions are correct for the reasons previously explained by some of the *amici* here. See Amici Curiae Br. of Chamber of Commerce of the United States of America et al., *Silva* v. *Schmidt Baking Distribution, LLC*, No. 24-2103 (2d Cir. May 19, 2025). But that issue is not presented in this case as it comes to the Court. Flowers Br. 12 n.1.

Application of "the meaningful-variation canon" requires giving Section 1's residual clause a different, narrower meaning. *Ibid.*

Third, under "the *ejusdem generis* canon," Section 1's residual clause should be "'controlled and defined by reference' to the specific classes of 'seamen' and 'railroad employees' that precede it." *Saxon*, 596 U.S. at 458 (quoting *Circuit City*, 532 U.S. at 115); accord *Bissonnette*, 601 U.S. at 252-53. The residual clause must be construed narrowly to reach only classes of workers that are similar—in terms of their engagement with foreign or interstate commerce—to the enumerated groups of "seamen" and "railroad employees."

2. Applying these three principles, the Court held in *Saxon* that a class of workers must be "*typically*" and "*directly* involved in transporting goods across state or international borders" to be "engaged in foreign or interstate commerce" within the meaning of Section 1's residual clause. 596 U.S. at 456-57 (emphasis added). "Put another way, transportation workers must be actively engaged in transportation of those goods across borders via the channels of foreign or interstate commerce." *Id.* at 458 (quotation marks omitted); accord *Bissonnette*, 601 U.S. at 256. Accordingly, while the workers themselves need not cross borders, as *Saxon* makes clear, the workers still must be "directly involved" and "actually engaged" in the transportation of goods across borders to fall within Section 1's residual clause.[3]

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[3] Because this case involves goods, the Court need not address whether Section 1 includes those who transport passengers and their effects. See, e.g., *Cunningham* v. *Lyft, Inc.*, 17 F.4th 244,

That approach follows from Section 1's use of the word "workers," which "directs the interpreter's attention to 'the *performance* of work.'" *Saxon*, 596 U.S. at 456 (quoting *New Prime*, 586 U.S. at 116); accord *Bissonnette*, 601 U.S. at 253. In addition, "the word 'engaged'" "similarly emphasizes the *actual work* that the members of the class, as a whole, typically carry out." *Saxon*, 596 U.S. at 456 (emphasis added).

Moreover, the residual clause in Section 1 of the FAA is part of a narrow exception to Section 2's broader general coverage, which does extend to the full reach of Congress's commerce power, and the residual clause is further cabined by the *ejusdem generis* canon. For these reasons, each of Section 1's relevant terms—including "workers," "engaged," and "commerce"—must be interpreted based on their ordinary meanings at the time of the FAA's enactment, rather than expansive modern conceptions of what qualifies as interstate commerce. *Saxon*, 596 U.S. at 456 (identifying and relying on dictionary definitions contemporary to the FAA's enactment); see also, *e.g.*, Black's Law Dictionary 651 (2d ed. 1910) (defining "interstate commerce" as "commerce between two states," specifically—"traffic, intercourse, commercial trading, or [] transportation" "between or among the several states of the Union, or from or between points in one state and points in another state"); *Hamrick*, 1 F.4th at 1350 (relying on this then-prevailing definition of "in-

249 (1st Cir. 2021) (declining to "address this contention" because the Section 1 exemption does not apply to rideshare drivers for other reasons).

terstate commerce" to conclude that the class of workers must "actually engage[]" in cross-border transportation).

The Fifth Circuit, post-*Saxon*, held that a local delivery driver who delivered items from an in-state warehouse to a company's customers was not a member of a class of workers exempt from the FAA. *Lopez*, 47 F.4th at 432-33. It did not matter that the goods being transported had previously traveled interstate. Instead, the Fifth Circuit correctly focused on what the drivers themselves were doing, and those "drivers enter the scene after the goods have already been delivered across state lines." *Id.* at 432.

Pre-*Saxon* decisions from other circuits are in accord. In addressing the applicability of Section 1 to "drivers who make local deliveries of goods and materials that have been shipped from out-of-state to a local warehouse," the Eleventh Circuit held that the district court had erred by "focus[ing] on the movement of the goods" rather than whether the class of workers, "in the main, actually engages in interstate commerce," meaning direct involvement in the transportation of goods "across state lines." *Hamrick*, 1 F.4th at 1340, 1346, 1350-52. It held that workers who make local in-state deliveries do not fall within the Section 1 exemption just because the goods "had been previously transported interstate." *Id.* at 1349 (quotation marks omitted). That is because, "in the text of the exemption, 'engaged in foreign or interstate commerce' modifies 'workers' and not 'goods.'" *Id.* at 1350.

Writing for the Seventh Circuit, then-Judge Barrett likewise explained why the plaintiffs were mistaken in arguing that the Section 1 "exemption is not so much about what the worker does as about where

the goods have been." *Wallace*, 970 F.3d at 802. Instead, engaging in foreign or interstate commerce within the meaning of Section 1 requires "workers [to] be connected not simply to the goods but to the *act of moving those goods across* state or national borders." *Ibid.* (emphasis added). Indeed, focusing solely or primarily on the origin and movement of the goods "would sweep in numerous categories of workers whose occupations have nothing to do with interstate transport—for example, dry cleaners who deliver pressed shirts manufactured in Taiwan and ice cream truck drivers selling treats made with milk from an out-of-state dairy." *Ibid.* The Seventh Circuit therefore held that local food delivery drivers who deliver meals and packaged items from restaurants to diners are not "engaged in * * * interstate commerce" within the meaning of Section 1 of the FAA, because "the interstate movement of goods" was not "*a central part of the job description* of the class of workers." *Id.* at 803 (emphasis added).

3. The context of the statute also confirms that the text of the residual clause—"engaged in foreign or interstate commerce"—is limited to classes of workers whose typical work requires direct involvement with the movement of goods across borders.

Indeed, the narrow meaning of "engaged in foreign or interstate commerce" under the Section 1 exemption's residual clause is necessarily specific to that statute and the FAA's unique structure—including because the phrase is found in a narrow residual exception to an otherwise broadly applicable statute and is further cabined by the *ejusdem generis* canon and the preceding enumerated terms "seamen" and "rail-

road employees." When previously interpreting Section 1, this Court has cautioned against assuming that "statutory * * * formulations necessarily have a uniform meaning whenever used by Congress" and directed courts to "construe the 'engaged in commerce' language in the FAA with reference to the statutory context in which it is found and in a manner consistent with the FAA's purpose." *Circuit City*, 532 U.S. at 118 (quotation marks omitted).

Context matters in interpreting Section 1. As the Eleventh Circuit concluded, "We don't give 'in commerce' or 'engaged in commerce' the same meaning it has in the other statutes just because Congress used the same terms in the Federal Arbitration Act." *Hamrick*, 1 F.4th at 1348.

B. Section 1's Residual Clause Additionally Requires That Direct Involvement In Transporting Goods Across State Or International Borders Is A Central Part Of The Workers' Job Description.

The Tenth Circuit's interpretation of Section 1 was incorrect for another reason: the exemption's residual clause applies only if direct involvement in transportation of goods across state or national borders is *central* to the work performed by the relevant class of workers.

As then-Judge Barrett explained, Congress viewed seamen and railroad employees as workers "whose occupations [we]re *centered* on the transport of goods in interstate and foreign commerce." *Wallace*, 970 F.3d at 802 (emphasis added)

At the time of the FAA's enactment, railroad employees and maritime workers routinely and typically

were involved in the movement of goods across long distances and state or national borders. See Paul Stephen Dempsey, *Transportation: A Legal History*, 30 Transp. L.J. 235, 275 (2003).

For example, one study reported that in 1920, the average freight haul by railroad was 308 miles. See L.E. Peabody, *Forecasting Future Volume of Railway Traffic*, in 66 Railway Age 899, 900 (Samuel O. Dunn et al. eds., 1924); see also, *e.g.*, Thirty-Third Annual Report on the Statistics of Railways in the United States 37 (Interstate Commerce Comm., Bureau of Statistics 1933) (in 1919, the average freight haul of a Class I railroad traveled 178.29 miles).

Another study reported that the average freight ship haul shortly after the Act's enactment was 660 miles. Harold Barger, *The Transportation Industries, 1889-1946: A Study of Output, Employment and Productivity* 128 (1951).

The "typical 'seamen' and 'railroad employees'" of the 1920s thus "actually engage[d] in interstate or international commercial transportation" as a central part of their jobs. *Hamrick*, 1 F.4th at 1351.

Under the residual clause, therefore, a party seeking to avoid the FAA's coverage must also "demonstrate that the interstate movement of goods is a *central part* of the job description of the class of workers to which they belong." *Wallace*, 970 F.3d at 803 (emphasis added). Stated another way, "interstate transportation [must be] 'a central part of the class members' job description' on par with seamen and railroad employees." *Osvatics*, 535 F. Supp. 3d at 21 (quoting *Wallace*, 970 F.3d at 803).

Applying this standard, the First, Third, and Ninth Circuits have agreed, for example, that rideshare drivers (such as those who use the Uber and Lyft platforms to offer rides) do not fall within the Section 1 exemption because they overwhelmingly provide local, intrastate rides. See *Singh* v. *Uber Techs., Inc.*, 67 F.4th 550, 553 (3d Cir. 2023); *Cunningham*, 17 F.4th at 252-53; *Capriole* v. *Uber Techs., Inc.*, 7 F.4th 854, 865-66 (9th Cir. 2021); see also *Osvatics*, 535 F. Supp. 3d at 18-21. It "cannot even arguably be said" that rideshare drivers and other local workers, unlike seamen and railroad employees, are a class of "workers primarily devoted to the movement of goods and people beyond state boundaries." *Cunningham*, 17 F.4th at 253.

Or, as the Ninth Circuit similarly put it, such local workers, even if they occasionally cross state lines, stand in stark "contrast" to "seamen and railroad workers," for whom "the interstate movement of goods and passengers over long distances and across national or state lines is an indelible and 'central part of the job description.'" *Capriole*, 7 F.4th at 865 (quoting *Wallace*, 970 F.3d at 803).

This Court in *Saxon* likewise instructed courts to look at "the actual work that the members of the class, as a whole, *typically* carry out," and noted that Saxon belonged to a class of workers "who physically load and unload cargo on and off airplanes on a *frequent* basis." 596 U.S. at 456 (emphases added). The Third Circuit made clear that the test from *Wallace* and similar cases is wholly consistent with *Saxon*, explaining that rideshare drivers are not "typically involved with the channels of interstate commerce," as Section 1 re-

quires. *Singh*, 67 F.4th at 559; see also *Archer* v. *Grubhub, Inc.*, 190 N.E.3d 1024, 1029-33 (Mass. 2022) (relying on *Wallace* in concluding post-*Saxon* that the Section 1 exemption does not apply to local delivery drivers).

Limiting the residual clause to those workers whose engagement with foreign or interstate commerce mirrors that of seamen and railroad employees is not just required by the text, context, and structure of the FAA. It also ensures that Section 1's narrow exemption does not sweep in countless workers who engage in "incidental" interstate transportation, such as "the interstate 'transportation' activities of * * * a pizza delivery person who delivered pizza across a state line to a customer in a neighboring town," or an account manager who occasionally crossed the border between Georgia and Alabama in delivering furniture and other items to customers. *Hill* v. *Rent-A-Center, Inc.*, 398 F.3d 1286, 1290 (11th Cir. 2005). As another court put it, citing *Hill*, "[n]otwithstanding the fact that pizzas are crossing state lines, no pizza delivery person belongs to a 'class of workers engaged in foreign or interstate commerce'" within the meaning of Section 1. *Rogers v. Lyft, Inc.*, 452 F. Supp. 3d 904, 916 (N.D. Cal. 2020), *aff'd*, 2022 WL 474166 (9th Cir. Feb. 16, 2022).

Indeed, in rejecting a separate "transportation industry" requirement for application of the Section 1 exemption, this Court in *Bissonnette* made clear instead that the requirement that the class of workers be directly and actively involved with interstate transportation to trigger the Section 1 exemption's residual clause forecloses "'any attempt to give the provision a sweeping, open-ended construction.'" 601 U.S. 256

(quoting *Circuit City*, 532 U.S. at 118). And it prevents the exemption from applying to "virtually all workers who load or unload goods—from pet shop employees to grocery store clerks." *Ibid.*

C. The Class Of Workers To Which Plaintiff Belongs Does Not Satisfy These Standards.

The class of workers that includes Brock does not satisfy the above standards. As Flowers' brief details (at 9-10), these workers sell and distribute baked goods entirely within a single state. And unlike the cargo loaders in *Saxon*, these workers are not involved at all in the goods' crossing of state borders, which occurs before the goods come into the workers' hands. The Court in *Saxon*, for example, compared the cargo loaders' work of loading or unloading cargo on and off an airplane to "'wharfage,'" which Section 1 refers to as a "'matter[] in foreign commerce.'" 596 U.S. at 459 (quoting 9 U.S.C. § 1). There is no comparable involvement with the interstate movement of goods here.

Instead, the work performed here is more akin to that of the workers in *Lopez*, who "enter the scene" only "*after* the goods have already been delivered across state lines" and come to rest at a warehouse. 47 F.4th at 432 (emphasis added). Brock and other distributors pick up the goods from warehouses presorted and make purely local, intrastate deliveries. Flowers Br. 9; Pet. App. 5a. Accordingly, Brock and his class of workers are not directly involved in the transportation of goods across borders at all, much less as a central part of their job description.

In concluding that Brock nonetheless belongs to a class of workers "engaged in foreign or interstate commerce" within the meaning of the Section 1 exemption, the Tenth Circuit analogized this case to a pair of decisions—both pre-*Saxon* and *Bissonnette*—holding that contracts of "last leg" delivery drivers are exempt from the FAA under Section 1 on the theory that the goods are still traveling in interstate commerce until they reach the customer who ordered them from out of state. Pet. App. 26a (citing *Waithaka* v. *Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020); *Rittmann* v. *Amazon.com, Inc.*, 971 F.3d 904 (9th Cir. 2020)).

Both the Tenth Circuit here and the *Rittmann* and *Waithaka* decisions fundamentally erred by focusing on the origin and movement of the *goods* and the broader relationships among the company, its contractors, and its customers rather than the *actual work* performed by the class of workers—as *Saxon* and the text and structure of Section 1 require.

To be sure, it might be possible to determine from a business's activities that its workers *do not* perform certain types of work—for example, a business that engages in no interstate commerce likewise will not have any employees engaged in interstate commerce. But the inverse is not true. That is why this Court in *Saxon* determined that the workers who loaded and unloaded cargo "on and off airplanes that travel across the country" fell within the Section 1 exemption, rather than relying upon those workers' mere employment by Southwest Airlines. 596 U.S. at 453, 456.

Thus, as the Fifth Circuit recognized, this "Court's elaboration in *Saxon*" on what it means to be "engaged in foreign or interstate commerce" under the Section 1 exemption means that the exemption does not apply

to any workers who merely handle goods that cross state or national borders, but instead is limited "to those 'actively engaged in transportation of those goods across borders.'" *Lopez*, 47 F.4th at 432-33 (quoting *Saxon*, 596 U.S. at 458). The Tenth Circuit's "error" in overlooking the critical characteristics of the actual work that Brock and similar workers perform resulted from its misplaced "focus[] on the movement of the goods and not the class of workers." *Hamrick*, 1 F.4th at 1351.

As noted above (at 12), unlike Section 2, which reaches the full extent of "Congress' commerce power" and can therefore expand (or contract) the FAA's coverage over time to match this Court's understanding of the constitutional reach of that power, *Allied-Bruce*, 513 U.S. at 277, the meaning of the Section 1 exemption must be the same today as when "Congress enacted the [FAA] in 1925," *New Prime*, 586 U.S. at 121; see also *Saxon*, 596 U.S. at 455 (Section 1 must be given its "contemporary" meaning).

For that reason, the Tenth Circuit's approach to applying Section 1's residual clause—sweeping in local delivery work into a single, nebulous stream of interstate commerce—is misplaced. The Tenth Circuit's approach harkens back to *Wickard* v. *Filburn*, 317 U.S. 111 (1942), and the "far reaching" interpretations of Congress's commerce power that followed, *United States* v. *Lopez*, 514 U.S. 549, 560 (1995).

Whatever one might say about those *post*-1925 decisions as a matter of constitutional interpretation, they are of no relevance in interpreting Section 1's residual clause according to its plain meaning at the time of the FAA's enactment in 1925—as the context and structure of the FAA demand.

In sum, the class of workers in this case moves goods from one in-state location to another and is not directly involved in the goods' interstate movement. The class is not "engaged in foreign or interstate commerce" under the Section 1 exemption's residual clause because the workers are not "directly involved in transporting goods across state or international borders." *Saxon*, 596 U.S. at 457.

II. An Improperly Expansive Construction Of The Residual Clause Exemption Will Harm Businesses And Workers And Burden Courts.

Failing to cabin Section 1's residual clause in accordance with its text, context, and structure will produce two significant adverse consequences. First, it will only increase the already time-consuming and costly litigation over the FAA's application—thereby undermining one of Congress's key goals in enacting the FAA. Second, it will deprive some businesses and workers of the benefits of arbitration protected by the FAA.

1. This Court has long recognized "Congress' clear intent, in the [Federal] Arbitration Act, to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone*, 460 U.S. at 22. Straightforward, easily administrable rules are therefore especially important in the context of the FAA.

Thus, the *Circuit City* Court emphasized that Section 1 should not be interpreted in a manner that introduces "considerable complexity and uncertainty * * *, in the process undermining the FAA's proarbitration purposes and 'breeding litigation from

a statute that seeks to avoid it.'" 532 U.S. at 123 (quoting *Allied-Bruce*, 513 U.S. at 275).

Interpreting the residual clause in accordance with its plain meaning—requiring that the class of workers be "typically" and "*directly* involved in transporting goods across state or international borders" (*Saxon*, 596 U.S. at 455-57 (emphasis added))—produces a simple test that should be relatively easy to apply. It should not be difficult or factually complex in the mine-run of cases to determine whether a class of workers is directly involved in the movement of goods across state lines or national boundaries as a central part of their job. The workers' responsibilities are often undisputed. See, *e.g.*, *Saxon*, 596 U.S. at 456 (noting that "Southwest has not meaningfully contested that ramp supervisors like Saxon frequently load and unload cargo"). And in many instances those responsibilities are memorialized in the parties' contract. See Flowers Br. 9-10.

Under the Tenth Circuit's approach, by contrast, even when classes of workers primarily (or even, as here, entirely) engage in local delivery work within a single state, courts will have to decide whether those workers are nevertheless somehow sufficiently bound up with interstate movement of goods to fall under the residual clause. And to answer that inquiry, courts will have to delve into the movement of goods and the minutiae of supply chains and customer relationships.

The decision below powerfully illustrates why this standard is unworkable. The court of appeals determined that it needed to explore the buyer-seller relationships among Flowers, Brock, and Brock's customers to determine whether the movement of the baked goods was part of a continuous interstate journey—

identifying three non-exclusive factors and leaving open the possibility that still more factors could apply in other cases. Pet.App.18a-19a & n.5; page 5, *supra*. The court then sketched out five diagrams to try and explain why it believed the "key" factor in the Section 1 inquiry was the relationship between Flowers and Brock, Inc.'s customers (Pet. App. 19a-22a)—even though the text of Section 1's residual clause says nothing about company-customer relationships and instead focuses on the actual work being performed by the relevant class of workers.

Interpreting Section 1's residual clause to require such an inquiry produces "serious problems of practical application." *Rittmann*, 971 F.3d at 936 (Bress, J., dissenting). And "[u]ndertaking such confounding inquiries in the context of the FAA is particularly undesirable when the result will inevitably mean more complex civil litigation over the availability of a private dispute resolution mechanism that is supposed to itself reduce costs." *Id.* at 937 (Bress, J., dissenting) (citing *Circuit City*, 532 U.S. at 123; *Allied-Bruce*, 513 U.S. at 275).

Even if some of the parties' underlying disputes are ultimately compelled to arbitration, the intervening litigation over the FAA's application would severely undermine the FAA's purpose of ensuring speedy and efficient dispute resolution. And this expensive and time-consuming litigation would burden courts as well.

The Tenth Circuit's standard further compounds the costs and delays associated with resolving the FAA's application through the risk of court-ordered discovery that threatens to drag on for months. In *Bissonnette*, for example, the Second Circuit on remand

from this Court sent the case back to the district court on the Section 1 issue—over five years after the litigation began. *Bissonnette* v. *LePage Bakeries Park St., LLC*, 123 F.4th 103, 106-07 (2d Cir. 2024). And the Second Circuit cited the Tenth Circuit's decision in this case in identifying the multiple factors that the district court might consider and the "[r]elevant evidence for this inquiry" that the parties might have to develop through discovery, such as "evidence relating to the destination for which particular goods are earmarked at various times in their transport across state lines" and "whether and when the goods come to a permanent rest within the state." *Ibid.* (quotation marks omitted).

Similarly, after more than four years of litigation in another case, the Second Circuit determined that discovery was required to determine whether the drivers at issue belonged to a class of workers engaged in interstate commerce under Section 1 and remanded the case to the district court for that purpose. See *Aleksanian* v. *Uber Techs. Inc.*, 2023 WL 7537627, at *2-4 (2d Cir. Nov. 14, 2023). Other courts also have ordered discovery into application of the Section 1 exemption's residual clause. See *Singh* v. *Uber Techs., Inc.*, 939 F.3d 210, 227-28 (3d Cir. 2019); *Rodriguez* v. *Inter-Con Sec. Sys., Inc.*, 2025 WL 1779166, at *1 (E.D.N.Y. June 27, 2025); *Williams* v. *Revel Rideshare*, 2025 WL 1663625, at *7 (E.D.N.Y. June 11, 2025); *Rietheimer* v. *United Parcel Serv., Inc.*, 2023 WL 11952209, at *2 (D. Colo. Sept. 28, 2023); *Coleman* v. *System One Holdings, Inc.*, 2022 WL 22869545, at *1 (W.D. Pa. Mar. 3, 2022); *Golightly* v. *Uber Techs., Inc.*, 2021 WL 3539146, at *3-4 (S.D.N.Y. Aug. 11, 2021); see also *Singh* v. *Uber Techs., Inc.*, 571 F. Supp. 3d 345, 365 (D.N.J. 2021) (concluding, over two years

after the Third Circuit's initial remand and after months of discovery, that rideshare drivers "are not exempt from the FAA" under the residual clause), *aff'd*, 67 F.4th 550 (3d Cir. 2023).[4]

In sum, the upshot of the Tenth Circuit's expansive interpretation of the residual clause is that courts will be forced into a lengthy series of complex inquiries that produce unpredictable and inconsistent results "for reasons that have nothing to do with the on-the-ground work [the workers] perform." *Rittmann*, 971 F.3d at 938 (Bress, J., dissenting). And the prospect of lengthy and burdensome discovery into application of the Section 1 exemption's residual clause may cause some defendants to forgo their arbitration rights altogether—a result antithetical to the FAA's federal protection of arbitration agreements.

2. The failure to cabin Section 1's residual clause to classes of workers directly involved in the transportation of goods across borders also threatens to deny businesses and individuals the benefits of arbitration secured by the FAA. Without the FAA's protection, whether businesses and workers could invoke arbitration agreements would turn on state law and vary state by state. That variability would push more disputes out of arbitration into court because the FAA's protection against state-law rules that disfavor arbitration would no longer apply.

Predictable rules of enforceability are important for all contracts, but for the above reason are especially critical for arbitration agreements. This Court

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[4] Notably, the years of discovery and factual disputes in *Singh* were finally put to rest once the Third Circuit adopted the standard from *Wallace*. See *Singh*, 67 F.4th at 553.

has long recognized that "private parties have likely written contracts relying on [its FAA precedent] as authority." *Allied-Bruce*, 513 U.S. at 272. Those reliance interests in the uniform national policy protecting arbitration agreements (embodied by the FAA) have only increased over time. The Tenth Circuit's approach undermines those reliance interests by making it hard to predict how any given court will apply the nebulous multi-factor standard adopted by the court of appeals.

This Court also has repeatedly recognized the "real benefits" of "enforcement of arbitration provisions," *Circuit City*, 532 U.S. at 122-23, which include "'lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes,'" *Lamps Plus Inc.* v. *Varela*, 587 U.S. 176, 184-85 (2019) (quoting *Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010)); accord *Allied-Bruce*, 513 U.S. at 280 (one of the "advantages" of arbitration is that it is "cheaper and faster than litigation" in court) (quotation marks omitted); *14 Penn Plaza LLC* v. *Pyett*, 556 U.S. 247, 257 (2009) ("Parties generally favor arbitration precisely because of the economics of dispute resolution.").

These advantages extend to agreements between businesses and workers. This Court has been "clear in rejecting the supposition that the advantages of the arbitration process somehow disappear when transferred to the employment context." *Circuit City*, 532 U.S. at 123. To the contrary, the lower costs of arbitration "may be of particular importance in employment litigation, which often involves smaller

sums of money than disputes concerning commercial contracts." *Ibid.*

Empirical research confirms those observations. Scholars and researchers agree, for example, that the average employment dispute is resolved up to twice as quickly in arbitration as in court. See Lewis L. Maltby, *Private Justice: Employment Arbitration and Civil Rights*, 30 Colum. Hum. Rts. L. Rev. 29, 55 (1998) (average resolution time for employment arbitration was 8.6 months—approximately half the average resolution time in court); see also, *e.g.*, Nam D. Pham, Ph.D. & Mary Donovan, *Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration*, NDP Analytics 5-6, 15 (March 2022), https://bit.ly/3yiU23A (reporting that average resolution for arbitration was approximately two months faster than litigation); Michael Delikat & Morris M. Kleiner, *An Empirical Study of Dispute Resolution Mechanisms: Where Do Plaintiffs Better Vindicate Their Rights?*, 58 Disp. Resol. J. 56, 58 (Nov. 2003–Jan. 2004) (reporting findings that arbitration was 33% faster than analogous litigation); David Sherwyn, Samuel Estreicher, & Michael Heise, *Assessing the Case for Employment Arbitration: A New Path for Empirical Research*, 57 Stanford L. Rev. 1557, 1573 (2005) (collecting studies reaching similar conclusions).

Further, "there is no evidence that plaintiffs fare significantly better in litigation." *Id.* at 1578. To the contrary, a 2022 study released by the Chamber's Institute for Legal Reform found that employees were nearly *four times* more likely to win in arbitration than in court. Pham, *supra*, at 4-5, 12, 17 (surveying more than 25,000 employment arbitration cases and

260,000 employment litigation cases resolved between 2014 to 2021 and reporting a 37.7% win rate in arbitration versus 10.8% in litigation). The same study found that the median monetary award for employees who prevailed in arbitration was over double the award that employees received in cases won in court. *Id.* at 4-15, 14 ($142,332 in arbitration versus $68,956 in litigation); see also Theodore J. St. Antoine, *Labor and Employment Arbitration Today: Mid-Life Crisis or New Golden Age?*, 32 Ohio St. J. on Disp. Resol. 1, 16 (2017) (arbitration is "favorable to employees as compared with court litigation").

Earlier scholarship likewise reports a higher employee-win rate in arbitration than in court. See Sherwyn, 57 Stanford L. Rev. at 1568-69 (observing that, after accounting for dispositive motions, the actual employee-win rate in court is "only 12% [to] 15%") (citing Maltby, 30 Colum. Hum. Rts. L. Rev. at 47) (of dispositive motions granted in court, 98% are granted for the employer); Nat'l Workrights Inst., *Employment Arbitration: What Does the Data Show?* (2004), https://bit.ly/3IVddnP (concluding that employees were 19% more likely to win in arbitration than in court).

Thus, "there is no evidence that plaintiffs fare significantly better in litigation [than in arbitration]." St. Antoine, 32 Ohio St. J. on Disp. Resol. at 16 (quotation marks omitted; alterations in original). Rather, arbitration is generally "favorable to employees as compared with court litigation." *Ibid.*; see also Maltby, 30 Colum. Hum. Rts. L. Rev. at 46. Yet arbitration benefits businesses as well through the generally lower costs of adjudication than those in court.

In sum, adopting the Tenth Circuit's overbroad reading of the Section 1 exemption would impose real costs on businesses and workers. Not only is traditional litigation more expensive than arbitration—and takes longer to resolve—for businesses and workers alike, but the uncertainty stemming from the Tenth Circuit's approach would engender additional expensive disputes over the enforceability of arbitration agreements with workers. Businesses would inevitably pass on these litigation expenses to consumers (in the form of higher prices) and to workers (in the form of lower compensation).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

JENNIFER B. DICKEY
JONATHAN D. URICK
U.S. Chamber Litigation Center
1615 H Street, NW
Washington, DC 20062

Counsel for Amicus Curiae *the Chamber of Commerce of the United States of America*

MONICA WELT
JOSHUA MOORE
Retail Litigation Center, Inc.
99 M St. SE
Washington DC 20003

Counsel for Amicus Curiae *Retail Litigation Center, Inc.*

STEPHANIE A. MARTZ
National Retail Federation
1101 New York Avenue, NW, Suite 1200
Washington DC 20005

Counsel for Amicus Curiae *National Retail Federation*

ARCHIS A. PARASHARAMI
Counsel of Record
DANIEL E. JONES
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
aparasharami@mayerbrown.com

Counsel for Amici Curiae

KAREN R. HARNED
National Association of Wholesaler-Distributors
1325 G Street NW, Suite 1000
Washington, DC 20005

Counsel for Amicus Curiae *National Association of Wholesaler-Distributors*

ERIKA KLENICKI
CAROLINE MCAULIFFE
National Association of Manufacturers
733 10th Street, NW, Suite 700
Washington, DC 20001

Counsel for Amicus Curiae *National Association of Manufacturers*

ELIZABETH GAUDIO MILITO
PATRICK J. MORAN
NFIB Small Business Legal Center, Inc.
555 12th Street, NW, Ste. 1001
Washington, DC 20004

Counsel for Amicus Curiae *NFIB Small Business Legal Center, Inc.*

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